

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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| COMMONWEALTH OF VIRGINIA |) | CRIMINAL NO. 102888 |
| VERSUS |) | |
| LEE BOYD MALVO a/k/a |) | INDICTMENT - CAPITAL MURDER (2 |
| John Lee Malvo |) | Counts) and USING A FIREARM IN THE |
| | | COMMISSION OF A FELONY |

On March 3, 2003, Robert F. Horan, Jr., the Commonwealth's Attorney, Raymond Morrogh, the Deputy Commonwealth's Attorney, LEE BOYD MALVO a/k/a John Lee Malvo, the Defendant, and Michael Arif and Craig Cooley, co-counsel for the Defendant, appeared before this Court. The Defendant is indicted for the felonies of CAPITAL MURDER (2 Counts) and USING A FIREARM IN THE COMMISSION OF A FELONY and he appeared while in custody.

This case came before this Court today for argument on the Defendant's motions. Following are the motions heard by the Court and the Court's rulings on each motion:

The Motion to Limit Excessive Uniformed Officers in the Courtroom was granted. The defendant had no objection to the number of uniformed officers present at the hearing (approximately 6). The Court ruled that the Sheriff, in his discretion, may increase the number of uniformed officers present in the Courtroom in order to maintain proper security during the trial. The defendant was advised that counsel could object at trial if he feels that there are an excessive number of uniformed law enforcement officer at trial.

The Motion for Individual and Sequestered Voir Dire was granted in part and denied in part. The Court ruled that general questions, such as availability for the expected length of the trial, would be posed to the potential jurors as a group. More sensitive questions, such as exposure to pretrial publicity and opinions on the death penalty, initially would be posed to the jurors in groups of three, and, if necessary, individually.

The Motion for Additional Peremptory Challenges was denied.

The Motion for Appointment of Expert Investigators was granted and the Court approved the appointment of three investigators.

The Motion for Appointment of a Mental Health Expert was granted and the Court approved the appointment of Dr. Dewey Cornell. The Court agreed to compensate Dr. Cornell for his services to the defense prior to the entry of this order.

The Court deferred its ruling on The Motion to Limit Prejudicial Crime Scene and Autopsy Photos until a pretrial conference is held closer to the trial date.

The Motion to Preclude the Use of Unadjudicated Conduct was continued to the next hearing date at the request of the defendant's counsel.

The Motion for Notice of Unadjudicated Conduct was granted. The Court instructed the Commonwealth's Attorney to disclose any unadjudicated prior acts within thirty days of the Court's ruling on the defendant's Motion to Suppress.

The Court entered an agreed Order for Discovery and Inspection.

The Motion to Reveal Any Agreements with Witnesses was granted.

The defendant withdrew his motion for a Bill of Particulars based on the Commonwealth Attorney's stipulation that the Commonwealth will attempt to prove the "vileness" factor in Code §19.2-264.4 (C) and Code §19.2-264.2 only by the facts and circumstances of the alleged offense and "depravity of mind". The Commonwealth agreed that it would not rely on "torture" or "aggravated battery" to prove vileness.

The Motion to Declare the Death Penalty Unconstitutional was denied.

The Court **ORDERED** that future hearings on motions be scheduled for March 31, 2003 at 10:00 a.m., April 28, 2003 at 10:00 a.m., and June 2, 2003 at 10:00 a.m.

The Defendant was remanded to the custody of the Sheriff.

Entered on March 17, 2003.

JUDGE JANE MARUM ROUSH